

SANITIZED DECS. – 03-529 C, 03-530 N, 03-531 W & 03-532 FN – BY – GEORGE V. PIPER – ISSUED – 12/22/03

ORDER GRANTING MOTION FOR RECONSIDERATION OF

FINAL DECISION

In its November 17, 2003 administrative decision, this tribunal found the Petitioner liable for consumers' sales and service tax for the period of January 1, 2000 through April 30, 2003, with interest, updated through November 15, 2003, and no additions to tax.

In the above decision, this tribunal also found the Petitioner liable for corporate net income tax for the period of January 1, 2000 through December 31, 2003, with interest, updated through November 15, 2003, and no additions to tax

In the above decision, this tribunal also found the Petitioner liable for business franchise tax for the period of January 1, 2000 through December 31, 2002, with interest, updated through November 15, 2003, and no additions to tax.

In the above decision, this tribunal also found the Petitioner liable for withholding tax for the period of January 1, 2000 through December 31, 2002, with interest, updated through November 15, 2003, and no additions to tax.

As per the signed return receipt card, this decision was served upon the Petitioner and its representative.

On November 25, 2003, Petitioner's counsel filed a "Motion for Reconsideration Of Opinion" with this tribunal for the sole purpose of reconsidering its issuance of the above referenced administrative decision.

By letter dated December 2, 2003, this tribunal informed the parties that the hearing on Petitioner's Motion For Reconsideration would be limited solely for the

purpose of taking evidence and presenting argument as to whether the administrative law judge should now exercise his discretion to set aside the final dismissal.

FINDINGS OF FACT

1. Petitioner's then authorized representative's failure to appear at the scheduled prehearing conference resulted from his negligence in that he did not read the entire letter scheduling both the prehearing conference and the hearing.

2. The day of the scheduled prehearing conference, Petitioner's authorized representative could not be located because his secretary had failed to activate the answering machine the night before.

3. Petitioner's telephone number has not been disconnected for the past several months. Rather, the State of Ohio changed Petitioner's area code, making the old telephone number inoperative.

CONCLUSIONS OF LAW

1. Pursuant to 121 C.S.R. 1, § 54.1, the presiding administrative law judge may hold a party in default should a finding be made that the party failed to plead or otherwise proceed as provided by Office of Tax Appeal's procedural rules.

2. Pursuant to 121 C.S.R. 1, § 54.2, and based upon the relevant procedural facts known at the time, the presiding administrative law judge initially exercised his discretion properly in this matter by dismissing Petitioner's appeal in his November 17, 2003 administrative decision.

3. Because of the relevant procedural evidence submitted by the Petitioner and its now authorized representative during the limited hearing of December 15, 2003, the presiding administrative law judge finds that there are

sufficient reasons to, and does hereby, set aside said default and dismissal pursuant to 121 C.S.R. 1, § 54.3. See 121 C.S.R. 1, § 1.6 (Apr. 20, 2003) (Office of Tax Appeals procedural rules to be liberally construed to attain “just” determinations).

Accordingly, it is **DETERMINED** that the Petitioner’s Motion for Reconsideration should be and is hereby **GRANTED** and the November 17, 2003 administrative decision is **WITHDRAWN**.

This tribunal will issue a new notice of a prehearing conference and a later evidentiary hearing. Prior thereto, the parties are strongly encouraged to attempt to resolve this matter, or to narrow the issues, if practicable, by, among other things, holding a counsel conference.

The Petitioner and its representatives are not to “read” this ruling as authorizing any subsequent failure(s) to comply with Office of Tax Appeal’s procedural rules, which have important functions. See 121 C.S.R. 1, § 1.5 (Apr. 20, 2003).